

HIPAA Privacy and Security Business Associate Contract Language

(August 2005)

**The following clause may
be included in contracts
which involve the handling
of protected health
information by MHS
business associates that
are modified or initiated
after April 21, 2005.**

PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION

Introduction

IAW DOD 6025.18R "Department of Defense Health Information Privacy Regulation" the Contractor meets the definition of Business Associate. Therefore, a Business Associate Agreement is required to comply with both the Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security regulations. This clause serves as that agreement whereby the Contractor agrees to abide by all applicable HIPAA Privacy and Security requirements regarding health information as defined in this clause, and DOD 6025.18R, as amended. Additional requirements will be addressed when implemented.

(a) *Definitions.* As used in this clause generally refer to the Code of Federal Regulations (CFR) definition unless a more specific provision exists in DOD 6025.18R.

Individual has the same meaning as the term "individual" in 45 CFR 164.501 and 164.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

Privacy Rule means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

Protected Health Information has the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by The Contractor from or on behalf of The Government.

Electronic Protected Health Information has the same meaning as the term "electronic protected health information" in 45 CFR 160.103.

Required by Law has the same meaning as the term "required by law" in 45 CFR 164.501 and 164.103.

Secretary means the Secretary of the Department of Health and Human Services or his/her designee.

Security Rule means the Health Insurance Reform: Security Standards at 45 CFR part 160, 162 and part 164, subpart C.

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR 160.103, 164.501 and 164.304.

(b) The Contractor agrees to not use or further disclose Protected Health Information other than as permitted or required by the Contract or as Required by Law.

(c) The Contractor agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Contract.

(d) The Contractor agrees to use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits in the execution of this Contract.

(e) The Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to the Contractor of a use or disclosure of Protected Health Information by the Contractor in violation of the requirements of this Contract.

(f) The Contractor agrees to report to the Government any security incident involving protected health information of which it becomes aware.

(g) The Contractor agrees to report to the Government any use or disclosure of the Protected Health Information not provided for by this Contract of which the Contractor becomes aware of.

(h) The Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by the Contractor on behalf of the Government agrees to the same restrictions and conditions that apply through this Contract to the Contractor with respect to such information.

(i) The Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides electronic Protected Health Information, agrees to implement reasonable and appropriate safeguards to protect it

(j) The Contractor agrees to provide access, at the request of the Government, and in the time and manner designated by the Government to Protected Health Information in a Designated Record Set, to the Government or, as directed by the Government, to an Individual in order to meet the requirements under 45 CFR 164.524.

(k) The Contractor agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Government directs or agrees to pursuant to 45 CFR 164.526 at the request of the Government or an Individual, and in the time and manner designated by the Government.

(l) The Contractor agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by the Contractor on behalf of, the Government, available to the Government, or at the request of the Government to the Secretary, in a time

and manner designated by the Government or the Secretary, for purposes of the Secretary determining the Government's compliance with the Privacy Rule.

(m) The Contractor agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for the Government to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(n) The Contractor agrees to provide to the Government or an Individual, in time and manner designated by the Government, information collected in accordance with this Clause of the Contract, to permit the Government to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, the Contractor may use or disclose Protected Health Information on behalf of, or to provide services to, the Government for treatment, payment, or healthcare operations purposes, in accordance with the specific use and disclosure provisions below, if such use or disclosure of Protected Health Information would not violate the Privacy Rule, the Security Rule or DOD 6025.18R if done by the Government.

Specific Use and Disclosure Provisions

(a) Except as otherwise limited in this Agreement, the Contractor may use Protected Health Information for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor.

(b) Except as otherwise limited in this Agreement, the Contractor may disclose Protected Health Information for the proper management and administration of the Contractor, provided that disclosures are required by law, or the Contractor obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Except as otherwise limited in this Agreement, the Contractor may use Protected Health Information to provide Data Aggregation services to the Government as permitted by 45 CFR 164.504(e)(2)(i)(B).

(d) Contractor may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

Obligations of the Government

Provisions for the Government to Inform the Contractor of Privacy Practices and Restrictions

(a) Upon request the Government shall provide the Contractor with the notice of privacy practices that the Government produces in accordance with 45 CFR 164.520, as well as any changes to such notice.

(b) The Government shall provide the Contractor with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect the Contractor's permitted or required uses and disclosures.

(c) The Government shall notify the Contractor of any restriction to the use or disclosure of Protected Health Information that the Government has agreed to in accordance with 45 CFR 164.522.

Permissible Requests by the Government

The Government shall not request the Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by the Government, except for providing Data Aggregation services to the Government and for management and administrative activities of the Contractor as otherwise permitted by this clause.

Termination

(a) Termination. A breach by the Contractor of this clause, may subject the Contractor to termination under any applicable default or termination provision of this Contract.

(b) Effect of Termination.

(1) If this contract has records management requirements, the records subject to the Clause should be handled in accordance with the records management requirements. If this contract does not have records management requirements, the records should be handled in accordance with paragraphs (2) and (3) below

(2) If this contract does not have records management requirements, except as provided in paragraph (3) of this section, upon termination of this Contract, for any reason, the Contractor shall return or destroy all Protected Health Information received from the Government, or created or received by the Contractor on behalf of the Government. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of the Contractor. The Contractor shall retain no copies of the Protected Health Information.

(3) If this contract does not have records management provisions and the Contractor determines that returning or destroying the Protected Health Information is infeasible, the Contractor shall provide to the Government notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Government and the Contractor that return or destruction of Protected Health Information is infeasible, the Contractor shall extend the protections of this Contract to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as the Contractor maintains such Protected Health Information.

Miscellaneous

(a) Regulatory References. A reference in this Clause to a section in DOD 6025.18R, Privacy Rule or Security Rule means the section as in effect or as amended, and for which compliance is required.

(b) Survival. The respective rights and obligations of Business Associate under the "Effect of Termination" provision of this Clause shall survive the termination of this Contract.

(c) Interpretation. Any ambiguity in this Clause shall be resolved in favor of a meaning that permits the Government to comply with DOD 6025.18R, Privacy Rule or Security Rule.